IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 284 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

D.K.SOLANKI

Versus

STATE OF GUJARAT & 4

Appearance:

MR HARESH J TRIVEDI for Petitioner

MR KP RAWAL, APP for Respondent No. 1

MR HM DHRUVA for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 25/08/2000

ORAL JUDGEMENT

Gujarat Pollution Control Board has filed this Criminal Revision Application against the order dated 13.07.1992 passed by the learned Chief Metropolitan

Magistrate discharging Respondent Nos. 2 to 5 who were accused in Criminal Case No.1004 of 1989. The said case was instituted on a complaint filed by Shri Dahyabhai K. Solanki, who was Assistant Law Officer, Gujarat Pollution Control Board. It was alleged in the complaint that the accused No.2 to 4 were partners of accused No.1 and they were all responsible for running the factory. It was further alleged that the said factory had been manufacturing H-acid chemicals since November, 1988 and the monthly output was 10 metric ton. It was alleged in para 4 of the complaint that the said unit had not obtained the consent of the Pollution Board till the complaint was filed but the unit had applied for No Objection Certificate on 13.05.1988 and the Board had granted No Objection Certificate. It was further stated in the complaint that on 23.01.1989, two officers of the Board inspected the unit and collected sample of polluted water in accordance with the Rules and an Inspection Report was prepared. The sample was sent for analysis and it was found that the polluted water which was discharged from the factory was far in excess of the prescribed parameters.

2. The learned Magistrate issued process and after the accused had appeared proceeded to record the evidence under Section 244 of CrPC since it was a warrant triable case. On behalf of the Board, two witnesses were examined. Shri Dahyabhai Kalubhai Solanki, who was the Law Officer, produced the sanction granted by the Chairman of the Board. The second witness was one Indumati Mukundrai who was employed as Scientific Officer under the Board and who had collected the sample. Thereafter, the learned Magistrate heard arguments as to whether charge should be framed or not and the learned Magistrate passed the order of discharge under Section 245 of CrPC. It is the said order of discharge which is under challenge in this Criminal Revision Application.

3. Now, it appears from the impugned order that the learned Magistrate after appreciating the evidence of the witnesses came to the conclusion that the sample had been collected in an unauthorised manner and that there was a common outlet of these units and it could not be said with certainty that the polluted water in question was discharged by the accused no.1 unit. However, under Section 245 of CrPC the Magistrate can discharge the accused, if no case against the accused is made out which, if unrebutted, would warrant his conviction. The learned counsel for the parties have taken me through the evidence on record and, in the facts of the case, it is not possible to say that no case was made out against the

accused which, if unrebutted, would warrant his conviction. The learned Magistrate was, therefore, in my opinion, not justified in discharging the accused. On the contrary, the evidence laid on behalf of the complainant showed that there was ground for presuming that the accused had committed the offence as alleged and hence the Magistrate was required to frame charge under Section 246 of the CrPC. The learned counsel for the respondents cited the decision of this court in Dahyabhai Kalubhai Solanki vs. Devine Intermediates & Chemicals & Ors. 1996 (1) GLR Page 729 and contended that non-compliance of statutory rules would be fatal. However, in my opinion, the said decision is not applicable to the facts of the present case and it will have to be seen at the end of the trial whether the charge is brought home to the accused or not. In the circumstances, this Criminal Revision Application is allowed and the impugned order is set aside and the learned Magistrate is directed to proceed further in accordance with law. Rule is made absolute accordingly.

(M.C. Patel, J.)

hki